

1936

*Present : Koch J.*SIMAN *v.* MISKIN.322—*M. C. Kandy, 11,446.**Motor car—Charge of exceeding the speed limit—Use of stop watch—Accuracy of reading—Proof.*

Where in a prosecution for exceeding the speed limit the only evidence consisted of readings from a stop watch, there must be proof that the stop watch was tested at or about the time it was used and the readings found to be accurate.

**A** PPEAL from a conviction by the Municipal Magistrate of Kandy.

*Colvin R. de Silva*, for accused, appellant.

July 15, 1936. KOCH J.—

The learned Magistrate has missed the nicety of the point raised by the defence. The facts are briefly that Mr. Bromley, Superintendent of Police, Central Province, was returning in his car from an election at Hatton and at a spot between the 69th and the 69th and a quarter milepost the appellant, a bus driver, in following from behind attempted to overtake. Mr. Bromley's orderly who was driving then gave the appellant the signal to overtake but the appellant on drawing alongside recognized the Police uniform of the orderly and fell back. Mr. Bromley thereupon pulled out a stop watch and timed the speed of the appellant's bus between the 69th and half milepost and the 71st milepost. According to this watch, the appellant took 3 minutes and 52 seconds to do the mile and a half. Arithmetically this works out to a speed of 23 miles per hour and if the stop watch check prevails, the appellant is clearly guilty of the offence he is charged with.

I accept every word of Mr. Bromley's evidence to be true. He has proved a frank witness and admitted that the accuracy of his stop watch readings were not checked for some time before the incident. He also does not say that this was done immediately or at any time thereafter. The learned Magistrate remarks that though this may be the case Mr. Bromley "knew the stop watch to be reasonably accurate". I do not find one single word in Mr. Bromley's evidence to the effect that he had reason to regard the stop watch as being in good order at the time. It is a pity that the stop watch was not tested soon after the occurrence; had this been done and the readings found to be accurate, I should have accepted the case as proved although the watch had not been checked at a reasonable time prior to the incident. The Magistrate bases his conviction on the proposition that "giving the accused the largest possible concession for inaccuracy of system and watch, he still must have been travelling well over the speed to which he was entitled". This is a dangerous principle to adopt. It means nothing more or less than saying that granted a watch is inaccurate and granted the extent of the inaccuracy to be unknown a reading of 23 miles per hour must necessarily show that the accused was exceeding the speed limit. The fallacy lies in assuming the extent of the inaccuracy to be so trifling as to render it negligible.

This is an unwarranted assumption, for there is not a particle of evidence to establish this. It is as reasonable to suppose that on the day the stop watch was used its readings were grossly inaccurate as to suppose that the inaccuracy was trifling. It may be one or the other, and in this state of things a conviction cannot be legally entered.

I wish to add that the prosecution has based its case entirely on the stop watch readings. There has been no evidence whatsoever led besides this to indicate at what speed the bus was travelling.

The conviction is set aside and the appellant acquitted.

*Set aside.*

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